

**76-5-203. Murder.**

- (1) As used in this section, "predicate offense" means:
- (a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
  - (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;
  - (c) kidnapping under Section 76-5-301;
  - (d) child kidnapping under Section 76-5-301.1;
  - (e) aggravated kidnapping under Section 76-5-302;
  - (f) rape of a child under Section 76-5-402.1;
  - (g) object rape of a child under Section 76-5-402.3;
  - (h) sodomy upon a child under Section 76-5-403.1;
  - (i) forcible sexual abuse under Section 76-5-404;
  - (j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;
  - (k) rape under Section 76-5-402;
  - (l) object rape under Section 76-5-402.2;
  - (m) forcible sodomy under Section 76-5-403;
  - (n) aggravated sexual assault under Section 76-5-405;
  - (o) arson under Section 76-6-102;
  - (p) aggravated arson under Section 76-6-103;
  - (q) burglary under Section 76-6-202;
  - (r) aggravated burglary under Section 76-6-203;
  - (s) robbery under Section 76-6-301;
  - (t) aggravated robbery under Section 76-6-302;
  - (u) escape or aggravated escape under Section 76-8-309; or
  - (v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.
- (2) Criminal homicide constitutes murder if:
- (a) the actor intentionally or knowingly causes the death of another;
  - (b) intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another;
  - (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct which creates a grave risk of death to another and thereby causes the death of another;
  - (d) (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;
  - (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and
  - (iii) the actor acted with the intent required as an element of the predicate offense;
  - (e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:
    - (i) an assault against a peace officer under Section 76-5-102.4;
    - (ii) interference with a peace officer while making a lawful arrest under Section

76-8-305 if the actor uses force against a peace officer; or

(iii) an assault against a military service member in uniform under Section 76-5-102.4;

(f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(4); or

(g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.

(3) (a) Murder is a first degree felony.

(b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.

(4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) This affirmative defense reduces charges only from:

(i) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.

(5) (a) Any predicate offense described in Subsection (1) that constitutes a separate offense does not merge with the crime of murder.

(b) A person who is convicted of murder, based on a predicate offense described in Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 125, 2009 General Session

Amended by Chapter 206, 2009 General Session